

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2009 DEC 17 P 2:31

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

AZ OVERSIGHT DIVISION
DOCKET CONTROL

In the matter of:

FIVE STAR TREE SERVICE AND
LANDSCAPING, LLC, an Arizona limited
liability company,

RICHARD MCCULLUM, JR., a married man

LEAH ATWOOD, a married woman

Respondents.

DOCKET NO. S-20715A-09-0564

**TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

Arizona Corporation Commission

DOCKETED

DEC 17 2009

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NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents FIVE STAR TREE SERVICE AND LANDSCAPING, LLC, RICHARD MCCULLUM, JR. AND LEAH ATWOOD are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

The Division further alleges RICHARD MCCULLUM, JR. and LEAH ATWOOD are persons controlling FIVE STAR TREE SERVICE AND LANDSCAPING, LLC within the meaning of A.R.S. § 44-1999, so that they are jointly and severally liable under A.R.S. § 44-1999 to the same extent as FIVE STAR TREE SERVICE AND LANDSCAPING, LLC for violations of the Securities Act.

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. FIVE STAR TREE SERVICE AND LANDSCAPING, LLC ("FIVE STAR TREE"), is an Arizona limited liability company formed on July 29, 2002. According to the Articles of Organization, FIVE STAR TREE is a manager-managed limited liability company.

3. RICHARD MCCULLUM, JR. ("R. MCCULLUM JR."), at all relevant times was an Arizona resident married to Respondent LEAH ATWOOD. According to the agreements signed with investors, R. MCCULLUM, JR. is the managing member of FIVE STAR TREES. In addition, R. MCCULLUM, JR. is a co-signer on the FIVE STAR TREE bank account.

4. LEAH ATWOOD ("ATWOOD"), at all relevant times was an Arizona resident married to R. MCCULLUM JR. According to the Articles of Organization, ATWOOD is the managing member of FIVE STAR TREE. ATWOOD is a co-signer on the FIVE STAR TREE bank account.

5. FIVE STAR TREE, R. MCCULLUM JR. AND ATWOOD may be referred to collectively as "Respondents".

6. R. MCCULLUM, JR. and ATWOOD are husband and wife. At all times relevant, R. MCCULLUM, JR. and ATWOOD were acting for their own benefit and for the benefit or in furtherance of their marital community.

III.

FACTS

7. Beginning in or around about July of 2008 through the present, Respondents began offering and selling investment opportunities to investors. The funds would be invested in a

1 “common fund for the purpose of entering into Private Placement Program[s].” Respondents have
2 raised at least \$150,000 from at least two investors located outside of Arizona.

3 8. The known investors spoke directly with R. MCCULLUM JR. prior to making their
4 investments. R. MCCULLUM JR. told the investors that the money would be used to invest in a
5 “trading platform.” At least one investor was told that the investment was guaranteed to pay 500
6 percent in 15 days. According to the investors, they had a passive role in the investment. Another
7 investor was told that the chosen program was a “five times money program” in which the return to
8 the investor would be five times the amount invested, to be paid back in ten days. The investors’
9 only obligation was to invest money.

10 9. R. MCCULLUM JR. stated that he had arrangements with a “Foundation” which
11 had the “trading platform” for investors. R. MCCULLUM JR. stated that he would pool the
12 investors’ funds to reach the minimum one million dollar investment figure.

13 10. R. MCCULLUM, JR. on behalf of FIVE STAR TREE as the “Agent” entered into
14 “Joint Venture Agreement” (“JV Agreement”) with each investor. According to the JV
15 Agreements, investors “make contributions to a common fund for the purpose of entering into
16 Private Placement Program (PPP) for a minimum of USD One Million Dollars (US
17 \$1,000,000.00), called the business interest.” The JV Agreement further states that the “Joint
18 Venture [is] to acquire and hold the business interest in common and to provide the finances
19 required to enter into the Private Placement Program.” The investors receive an “undivided
20 fractional part in the business interest.”

21 11. The JV Agreement further states that FIVE STAR TREE would act as the
22 “nominee” for the investors. The investment will be held in the name of R. MCCULLUM, JR. on
23 behalf of FIVE STAR TREE. R. MCCULLUM, JR. on behalf of FIVE STAR TREE as the Agent
24 will “pay a total profit to the [investor] 5 times the money within 15 business days of receipt of
25 funds earned profits from the PPP [Private Placement Program].” R. MCCULLUM, JR. signed the
26 JV Agreements as the “managing member” of FIVE STAR TREE.

12. The investors' funds were pooled into one bank account. Per R. MCCULLUM JR.'S instructions, the investors wired their investment funds directly to the bank account of FIVE STAR TREE he and ATWOOD controlled. In some instances, immediately after the wire transfer is credited to the FIVE STAR TREE bank account, the investors' funds are used to pay personal expenses of Respondents.

13. Upon information and belief, the Respondents are to receive five (5) percent of the "total gross income" as a fee.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer and Sale of Unregistered Securities)

14. From on or about July of 2008 through the present, Respondents have been offering or selling securities in the form of investment contracts within or from Arizona.

15. The securities referred to above are not registered pursuant to Articles 6 or 7 of the Securities Act.

16. This conduct violates A.R.S. § 44-1841.

y.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

17. Respondents are offering or selling securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

18. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

19. In connection with the offer or sale of securities within or from Arizona, Respondents are, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue

1 statements of material fact or omitting to state material facts that are necessary in order to make the
2 statements made not misleading in light of the circumstances under which they are made; or (iii)
3 engaging in transactions, practices, or courses of business that operate or would operate as a fraud or
4 deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the
5 following:

6 a) Respondents represented to offerees and investors that their investment funds
7 would be used to fund the purchase of a "Private Placement Program" when in fact the funds were
8 used to pay personal expenses of Respondents; and

9 b) Respondents misrepresented to offerees and investors that the investment was
10 guaranteed to pay 500 percent in 15 days when in fact the funds were used to pay personal expenses
11 and no funds appear to have been invested in any type of "trading platform."

12 20. This conduct violates A.R.S. § 44-1991.

13 21. R. MCCULLUM, JR. and ATWOOD directly or indirectly controlled persons or
14 entities within the meaning of A.R.S. § 44-1999, specifically FIVE STAR TREE. Therefore, R.
15 MCCULLUM, JR. and ATWOOD are jointly and severally liable under A.R.S. § 44-1999 to the
16 same extent as FIVE STAR TREE for its violations of A.R.S. § 44-1991.

17 VII.

18 TEMPORARY ORDER

19 Cease and Desist from Violating the Securities Act

20 THEREFORE, based on the above allegations, and because the Commission has determined
21 that the public welfare requires immediate action,

22 IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that Respondents,
23 their agents, servants, employees, successors, assigns, and those persons in active concert or
24 participation with Respondents CEASE AND DESIST from any violations of the Securities Act.

25 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in
26 effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

1 IT IS FURTHER ORDERED that this Order shall be effective immediately.

2 **VIII.**

3 **REQUESTED RELIEF**

4 The Division requests that the Commission grant the following relief:

- 5 1. Order Respondents to permanently cease and desist from violating the Securities Act,
6 pursuant to A.R.S. § 44-2032;
- 7 2. Order Respondents to take affirmative action to correct the conditions resulting from
8 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to
9 A.R.S. §44-2032;
- 10 3. Order Respondents to pay the state of Arizona administrative penalties of up to five
11 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- 12 4. Order that the marital community of R. MCCULLUM, JR. and ATWOOD is subject
13 to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action
14 pursuant to A.R.S. § 25-215; and
- 15 5. Order any other relief that the Commission deems appropriate.

16 **IX.**

17 **HEARING OPPORTUNITY**

18 Each respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-4-
19 307. **If a Respondent requests a hearing, the requesting respondent must also answer this**
20 **Temporary Order and Notice.** A request for hearing must be in writing and received by the
21 Commission within 20 days after service of this Temporary Order and Notice. The requesting
22 respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation
23 Commission, 1200 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained
24 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
25 www.azcc.gov/divisions/hearings/docket.asp.
26

1 If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10 to
2 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or
3 ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**
4 **Order shall remain effective from the date a hearing is requested until a decision is entered.**
5 After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order, with
6 written findings of fact and conclusions of law. A permanent Order may include ordering restitution,
7 assessing administrative penalties, or other action.

8 If a request for hearing is not timely made, the Division will request that the Commission
9 make permanent this Temporary Order, with written findings of fact and conclusions of law, which
10 may include ordering restitution, assessing administrative penalties, or other relief.

11 Persons with a disability may request a reasonable accommodation such as a sign language
12 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
13 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
14 Requests should be made as early as possible to allow time to arrange the accommodation.

15 X.

16 ANSWER REQUIREMENT

17 Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting
18 respondent must deliver or mail an Answer to this Temporary Order and Notice to Docket Control,
19 Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30
20 calendar days after the date of service of this Temporary Order and Notice. Filing instructions
21 may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet
22 web site at www.azcc.gov/divisions/hearings/docket.asp.

23 Additionally, the answering respondent must serve the Answer upon the Division.
24 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
25 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
26 Arizona, 85007, addressed to Wendy Coy, Senior Counsel.

1 The Answer shall contain an admission or denial of each allegation in this Temporary
2 Order and Notice and the original signature of the answering respondent or the respondent's
3 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial
4 of an allegation. An allegation not denied shall be considered admitted.

5 When the answering respondent intends in good faith to deny only a part or a qualification
6 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
7 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

8 The officer presiding over the hearing may grant relief from the requirement to file an
9 Answer for good cause shown.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 17th day of
11 December, 2009.



Mark Dinell
Assistant Director of Securities